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Constitutional Provisions and Statutes

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER and GWENDOLYN M. WELLS,
Appellants,

v

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN H. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS

Pursuant to Rule 16, paragraph 1(b) of this Court, appellees The Junior College District of Metropolitan Kan-

sas City, Missouri, James W. Stephens, President, William L. Cassell, Reed B. Kenagy, Jr., and Mrs. Y. B. Wasson, Members, and Linda L. Coulson, Secretary, of the Board of Trustees of said Junior College District, being all of the appellees except the Attorney General of the State of Missouri, move to dismiss this appeal on the ground that it does not present a substantial federal question.

QUESTION PRESENTED

Whether certain provisions of Section 178.820-1 of the Missouri Revised Statutes violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because they establish a certain percentage formula based upon school enumeration, the number of persons between the ages of six and twenty years, for the election of junior college trustees from component school districts.

STATEMENT

Appellees do not believe a restatement of the case is necessary, but certain provisions in the Missouri statutes regarding the organization and limitations of a junior college district—as well as its powers as enumerated by appellants (J.S. 7)—should be noted.

The Junior College District of Metropolitan Kansas City, Missouri is a junior college district organized and existing under the provisions of Sections 178.770 through 178.890 of the Revised Statutes of Missouri first enacted in 1961. (R. 35.)

Prior to the organization of any junior college district, the State Board of Education, which is appointed by the Governor (Mo. CONST., Art. IX, § 2(a); R.S.Mo. (1967 Supp.), § 161.022), establishes standards including whether

a junior college is needed, whether the assessed valuation will support it and whether there are a sufficient number of high school graduates in the proposed district. R.S.Mo. (1967 Supp.), § 178.770. The boundaries of the junior college district must coincide with the boundaries of the component school districts therein which provide educational courses through the 12th grade. *Id.*, § 178.790. Upon the petition of a certain percentage of the voters in each component school district praying that a junior college district be organized to offer 13th and 14th year courses, the State Board of Education ascertains if its standards are met and, if so, orders that an election be held. To carry, the proposal to organize a junior college district must receive a majority of the total votes cast, after publication notice of the organization election has been given. *Id.*, §§ 178.800, 178.810.

Section 178.820, which is attacked by appellants as unconstitutional, sets forth the procedure for election of the six junior college trustees, establishing a certain percentage formula based upon "school enumeration" which is defined elsewhere as "an enumeration of all persons between the ages of six and twenty years." R.S.Mo. (1967 Supp.), § 167.011.[1] If one or more component school districts has more than 33-1/3% and not more than 50% of the total school enumeration of the proposed district, as determined by the last school enumeration, then two trustees shall be elected from each such district and the remaining trustees shall be elected at large from the other school districts. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration, such district shall elect three trustees and the remaining three shall be elected at large from the remainder

1. Section 167.011 provides that the school board of each district in the State shall take such enumeration "during each school year . . . prior to the fifteenth day of May" with certain exceptions.

of the proposed district. If any school district has more than 66-2/3% of the total school enumeration, four trustees shall be elected from such school district and two trustees at large from the remainder of the proposed district.

There are eight component school districts in appellee The Junior College District of Metropolitan Kansas City, Missouri. In 1966-67, the Kansas City School District had 59.49% of the total school enumeration for the junior college district and accordingly has three trustees. The other three trustees were elected from the remaining seven component school districts, with 40.51% of the total school enumeration. (R. 41, J.S. 5a-6a.)

While a junior college district has certain enumerated powers (J.S. 7), the junior college district statutes themselves provide that all junior colleges so organized "shall be under the supervision of the state board of education." R.S.Mo. (1967 Supp.), § 178.780. This gubernatorially appointed board administers State financial support; formulates uniform policies as to budgeting, record keeping and student accounting; establishes uniform minimum entrance requirements and curricular offerings; and is responsible for the accreditation of all junior colleges under its control. *Ibid.* Furthermore, certificates to teach in the public schools of Missouri are granted and controlled by the State Board of Education and other authorities, not by the junior college district. *Id.*, §§ 168.021, 168.061, 168.071. And there are other limitations upon school districts which frequently require their obtaining voter approval. For example, any bond issue by any school district must be approved by two-thirds of the votes cast upon a ballot stating the amount and purposes of the loan. *Id.*, § 164.151. In the Junior College District of Metropolitan Kansas City, any annual tax levy cannot exceed ten cents per $100 valuation without voter approval. *Id.*, § 178.870.

ARGUMENT

The decision below is correct and there is no substantial federal question presented in this appeal. After carefully reviewing the reapportionment decisions of this Court, the Missouri Supreme Court *en banc*, in a six-to-one decision, properly held that Section 178.820 of the Missouri Revised Statutes was valid under the Fourteenth Amendment to the United States Constitution. The court concluded:

> "We thus hold that the one man, one vote principle does not properly apply to such a body as the defendant district; we further hold that §§ 178.820 and 178.840 are valid both under the 14th Amendment to the United States Constitution and under § 2 of Art. I of the Missouri Constitution. In this view it is immaterial whether the trustees are elected on the basis of population or 'school enumeration.' We may note here, however, that the yearly school enumeration does, in all probability, furnish a more accurate guide than does an outdated federal census. We also note, though the matter is not decisive here, the elasticity allowed in § 178.820 to the larger local districts in the election of trustees. The Kansas City District with 59.49% of the school enumeration elects three trustees; if the enumeration exceeds 66-2/3% it will elect four. This method is a far cry from the malapportionments shown in the decided cases." (R. 56, J.S. 12a-13a.)

1. Appellee The Junior College District of Metropolitan Kansas City, Missouri is essentially an administrative body created under State statutes by the Missouri legislature for the sole and special purpose of conducting a two-year junior college; it has no substantial legislative functions and is not a unit of local government "having general governmental powers over the entire geographic

area served by the body." *Avery* v. *Midland County*, 390 U.S. 474, 485 (1968). Accordingly, the "one man, one vote" principle is not applicable, and there is no violation of equal protection under the reasonable percentage formula in § 178.820 for electing junior college trustees, based upon school enumeration.

As readily reflected by the statutory scheme summarized in the Statement above, and notwithstanding a junior college district's powers which appellants emphasize (J.S. 7), it is altogether clear that a Missouri junior college district is not a Texas Commissioner's Court as was involved in *Avery;* it is not "a unit of local government with general responsibility and power for local affairs." *Avery* v. *Midland County, supra*, at 483.[2]

Rather, a Missouri junior college district is more akin to a Kent County, Michigan Board of Education, the Board

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2. Contrast the organizational and operational limitations of a Missouri junior college district, as summarized in the Statement above, with the description of the Midland County, Texas Commissioners Court as set forth in *Avery*:

> "The Commissioners Court is assigned by the Texas Constitution and by various statutory enactments with a variety of functions. According to the commentary to Vernon's Texas Statutes, the court:
>
> 'is the general governing body of the county. It establishes a courthouse and jail, appoints numerous minor officials such as the county health officer, fills vacancies in the county offices, lets contracts in the name of the county, builds roads and bridges, administers the county's public welfare services, performs numerous duties in regard to elections, sets the county tax rate, issues bonds, adopts the county budget, and serves as a board of equalization for tax assessments.'
>
> The court is also authorized, among other responsibilities, to build and run a hospital, Tex. Rev. Civ. Stat. Ann., Art. 4492 (1966), an airport, *id.*, Art. 2351 (1964), and libraries, *id.*, Art. 1677 (1962). It fixes boundaries of school districts within the county, *id.*, Art. 2766 (1965), may establish a regional public housing authority, *id.*, Art. 1269k, § 23a (1963), and determines the districts for election of its own members, Tex. Const., Art. V, § 18." *Avery* v. *Midland County, supra*, at 476-477.

that, as this Court described it, "performs essentially administrative functions" which, while important, "are not legislative in the classical sense." *Sailors* v. *Board of Education*, 387 U.S. 105, 110 (1967).[3] Even the one dissenter to the majority opinion below acknowledged that a junior college district "is not primarily a legislative body exercising general governmental functions." (R. 59, J.S. 15a-16a.) Accordingly, as was stated in *Sailors, supra*, at 111, "the principle of 'one man, one vote' has no relevancy," and thus the Missouri statutory formula is not violative of equal protection.

It is true that in *Sailors, supra*, at 109, Mr. Justice Douglas relied in part upon the stated fact that "The

3. Compare the authority of a Missouri junior college district with the actually even broader powers of the Michigan County board of education described in *Sailors* as follows:

> "The authority of the county board includes the appointment of a county school superintendent (Mich. Stat. Ann., § 15.3298(1)(b) (Supp. 1965)), preparation of an annual budget and levy of taxes (Mich. Stat. Ann., § 15.3298(1)(c) (Supp. 1965)), distribution of delinquent taxes (Mich. Stat. Ann., § 15.3298(1)(d) (Supp. 1965)), furnishing consulting or supervisory services to a constituent school district upon request (Mich. Stat. Ann., § 15.3298(1)(g) (Supp. 1965)), conducting cooperative educational programs on behalf of constituent school districts which request such services (Mich. Stat. Ann., § 15.3298(1)(i) (Supp. 1965)), and with other intermediate school districts (Mich. Stat. Ann., § 15.3298(1)(j) (Supp. 1965)), employment of teachers for special educational programs (Mich. Stat. Ann., § 15.3298(1)(h) (Supp. 1965)), and establishing, at the discretion of the Board of Supervisors, a school for children in the juvenile homes (Mich. Stat. Ann., § 15.3298(1)(k) (Supp. 1965)). One of the board's most sensitive functions, and the one giving rise to this litigation, is the power to transfer areas from one school district to another. (Mich. Stat. Ann., § 15.3461 (1959).)" *Sailors* v. *Board of Education*, 387 U.S. at 110, fn. 7.

A Missouri junior college district particularly has no such power as the last enumerated one of the Michigan county board of education because what limited authority a Missouri junior college district has in "pass[ing] on" (J.R. 7) the annexation of another school district is dependent upon voter initiation and approval of the district proposed to be annexed.

Michigan system for selecting members of the county school board is basically appointive rather than elective."[4] But it is important that in referring to *Sailors* in the subsequent *Avery* decision, this Court said that there "The Court rested on the administrative nature of the area school board's functions and the essentially appointive form of the scheme employed." *Avery* v. *Midland County, supra,* at 485. Clearly, therefore, the "administrative nature" of a Missouri junior college district's functions is significant, and the instant appellants' appeal does not present a substantial federal question when, in a *Sailors* and not an *Avery* situation, this Court has already "upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations." *Avery* v. *Midland County, supra,* at 485. The decision below is consistent with those of this Court.

2. Furthermore, the statutory percentage formula for electing junior college trustees in Missouri's Section 178.820 is not subject to the "one man, one vote" requirement because the formula is based upon school enumeration and not population.

In *Reynolds* v. *Sims,* 377 U.S. 533, 567 (1964), this Court stated that "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in *legislative* reapportionment controversies." (Emphasis added.) But population need not be the controlling criterion where an essentially non-legislative

4. As explained in *Sailors,* the people of Kent County, Michigan elected the boards of the 39 local school districts, which had vast population differences between them, and then each local board sent one delegate to the county meeting where five members of the county board of education were chosen, with each delegate voting once regardless of the size of his district. *Sailors* v. *Board of Education,* 254 F.Supp. 17, 18-19 (W.D. Mich.), *aff'd* 387 U.S. 105.

administrative body such as a junior college district is involved. Indeed, the Missouri system for allocation of trustees among the component school districts in a junior college district is expressly based upon school enumeration, and not population. School enumeration is an important and vital element in the operation and management of the Missouri public school system. As already noted, see footnote 1, *supra*, Section 167.011 of the Missouri Revised Statutes requires each school district to take an enumeration of all persons therein between the ages of six and twenty years on an annual basis, prior to May 15 of each school year, with certain exceptions. School enumeration is the basis on which county school funds are apportioned among the school districts within a county. R.S.Mo. (1967 Supp.), § 166.161. Accordingly, it was altogether reasonable for the Missouri legislature to make school enumeration, rather than population, the basis for the statutory formula in electing junior college trustees, an administrative group with a special-purpose function. As stated in *Sailors, supra*, at 110-111:

> "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation."

And again in *Avery, supra*, at 485:

> "This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems."

Thus, how can there be any constitutional objection to the State of Missouri making school enumeration its criterion in electing junior college district trustees?

As to the percentage aspect of the Missouri formula, there can likewise be no valid objection. The percentage groupings might not achieve mathematical perfection in all cases when there are only six members of the board to be elected from the total area and when the formula is also related to the boundary lines of the component school districts. *Cf. Dusch* v. *Davis*, 387 U.S. 112 (1967), where, as stated in *Avery, supra,* at 485, this Court "permitted Virginia Beach to choose its legislative body by a scheme that included at-large voting for candidates, some of whom had to be residents of particular districts, even though the residence districts varied widely in population." But, again, there is a rational basis for the Missouri legislature doing what it did as to a special-purpose junior college district. The percentage aspect of the election method encourages individual school districts to join together to form a junior college district—without their being swallowed up and losing all trustee representation to the larger school districts—and promotes the growth and development of the junior college system. Straight elections at large, as advocated by appellants, would do the opposite. See *Dusch* v. *Davis, supra,* at 117:

> "The Seven-Four Plan seems to reflect a detente between urban and rural communities that may be important in resolving the complex problems of the modern megalopolis in relation to the city, the suburbia, and the rural countryside."

Despite appellants' assertions to the contrary, with the special-purpose nature of a junior college district, there is certainly nothing invidious or arbitrary about Missouri's statutory percentage formula, notwithstanding

some variance from absolute mathematical norms. "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious." *Avery* v. *Midland County, supra,* at 484. A fallacy in appellants' argument here is that they tend to equate the term "school enumeration" with "population" and/or "voters." They argue that because the school enumeration of the Kansas City School District is larger than that of the other component school districts within the junior college district, the voters of the Kansas City School District are discriminated against in only being able to elect one-half of the six trustees. Appellees submit that there is no necessary connection or absolute mathematical relationship between the number of persons of student age in a school district and the number of people or voters in the same school district. The Missouri statute allocating junior college trustees on the basis of certain school enumeration percentages could not alone be held unconstitutional on the basis that the *voters* in one district are discriminated against, even assuming *arguendo* that the "one man, one vote" principle is applicable to school districts under certain circumstances.

In the final analysis, all that the appellee junior college district does is operate one school, and certainly its trustees, while elected, are not general representatives of the people. Beyond this, the powers of the district are limited, the voters being granted important authority as is the State Board of Education. If this Court would apply the "one man, one vote" rule to such special-purpose units with essentially administrative functions, a chaotic situation would follow and ensuing litigation would likely be endless.

CONCLUSION

For the foregoing reasons, it is submitted that the Missouri legislature was well within its discretion in providing for apportionment of junior college trustees under a percentage formula based on the school enumeration of the component school districts. Appellees accordingly urge that no substantial federal question has been presented and that the appeal from the decision below of the Missouri Supreme Court should be dismissed.

Respectfully submitted,

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February 3, 1969